

January 4, 2008

United States District Court
P.O. Box 711
Montgomery, Alabama 36101-0711

2008 JAN -7 A 9:25

RA P. HACKETT, S
U.S. DISTRICT COURT,
MIDDLE DISTRICT ALA

Attn: Susan Russ Walker
United States Magistrate Judge

RE: SM 2007 000341 Action No. 3:07-CV-1091-WKW
SM 2007 000342 Action No. 3:07-CV-1092-WKW

This afternoon copies of ***Notice of Substitution*** and ***Motions to Dismiss*** by Leura G. Canary were received today by Robert and Irene Wasserman. I wish to state again, these documents were never provided to us on any previous date. A review of documents in our small claims files at the Tallapoosa Circuit Court on December 31, 2007 did not show any documents received from Ms. Canary filed on December 14, 2007. Also, it was noted that the cover letter references both actions, but the documents only identify Action No. 3:07-CV-1091-WKW. **The Name of Robert Wasserman is present as the Plaintiff on the other documents, but the action number is not identified.**

Mr. Gregory Long, as Executive Director of the Federal Retirement Thrift Investment Board, must have duties which entail the proper enforcement and management of federal employee retirement funds. Unfortunately, it seems that when errors are committed and a wrong against another federal employee is done, the United States Attorney's office seeks to deny the wronged employee, his/her right guaranteed by the constitution of the United States. ***The right to be heard in a court of law.*** Mr. Neeley states his motion to dismiss is based on the Plaintiff's lack of subject-matter jurisdiction because an administrative claim to the appropriate federal agency was not presented. I request the court review my letter to Mr. Gregory Long dated September 15, 2007. In that letter, I stated what I had experienced and also requested a meeting with someone who could be identified as a proper authority figure at the Birmingham office to discuss the information available to Thrift Savings Plan participants. **At no time, was I informed or provided with information of my right or the process to file an administrative claim.**

Previously, I have enclosed a copy of Alabama's Small Claims Court document prepared by the Alabama Administrative Office of Courts, June 1996. Again, I want to bring to this court's attention that **No where in this document does it state government agencies are exempt from claims in Alabama's Small Claims Court.**

As a retired citizens of the State of Alabama, we are requesting justice in whatever court of law is available to a United States citizens seeking justice without an attorney. When no person was identified from my letters and phone calls to the Thrift Savings Office in Birmingham, we began legal action in the process available to Alabama citizens seeking justice without an attorney, Small Claims Court. This has resulted in default judgments against Mr. Long in the amounts of \$6000 plus court costs of \$222. Failure to respond without showing evidence that TSP employees managed my account properly has never been provided.

As a federal employee, the TSP Plan was the option given to me to save for retirement. My expectation was that the plan would be managed properly, and my rights as a participant would not be violated. The amount of extra 2006 federal tax incurred by my husband and me due to the improper distribution of my funds was \$10,621 for a married filing jointly tax return. We were wronged.

Therefore, we request the ***Notice of Substitution*** and ***Motions to Dismiss*** be denied due to lack of timely notice and the proper process to be followed for administrative claims for participants of the Thrift Savings Plan.

Respectfully submitted this 4th January, 2008.



Irene H. Wasserman



Robert N. Wasserman



**United States Attorney
Middle District of Alabama**

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January 3, 2008

Irene & Robert Wasserman
4554 Notasulga Rd.
Tallassee, AL 36078

RE: Irene Wasserman v. U.S. (Civil No.: 3:07-cv-1091-WKW)
Robert Wasserman v. U.S. (Civil No.: 3:07-cv-1092-WKW)

Dear Mr. & Ms. Wasserman:

As a courtesy, I have enclosed another copy of the *Notice of Substitution* and *Motion to Dismiss* for each of the above-referenced cases.

Yours very sincerely,

FOR THE UNITED STATES ATTORNEY
Leura G. Canary

R. Randolph Neeley
Assistant United States Attorney

LCC:RRN:dmc

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
EASTERN

NOTICE OF SUBSTITUTION

PLEASE TAKE NOTICE that pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988 §§ 5, 6, Pub. L. No. 100-694, 102 Stat. 4563 (1988) (codified at 28 U.S.C. § 2679), the United States is hereby substituted for the individual defendant, Gregory Long, with respect to the plaintiffs' state law cause of action. The grounds for this substitution are:

1. Plaintiff alleges that defendant Gregory Long, Executive Director, Federal Retirement Thrift Investment Board, and/or unnamed employees of the Thrift Savings Plan (TSP), an entity subject to the supervision of the Federal Retirement Thrift Investment Board, while acting within the line and scope of their employment, negligently failed to follow the plaintiff's instructions regarding certain financial transactions. The plaintiff seeks an award of damages to compensate for the losses alleged to have resulted from the actions of Gregory Long and/or unnamed employees of

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
7th CIRCUIT
NORTHERN DIVISION
EASTERN**

UNITED STATES OF AMERICA'S MOTION TO DISMISS

COMES NOW Defendant the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure, moves this Court to dismiss Plaintiff's claims for lack of subject-matter jurisdiction. In support of this motion, the United States advances the following grounds:

1. Plaintiff brings tort claims against Gregory Long, Executive Director, Federal Retirement Thrift Investment Board, and/or unnamed employees of the Thrift Savings Plan (TSP), claiming damages from allegedly tortious conduct which allegedly occurred during and in relation to the processing of certain financial transactions involving the TSP account of Irene Wasserman. *See* Complaint.

2. The United States Attorney has certified that Mr. Long and/or unnamed employees of the TSP were acting within the scope of their federal office or employment at the time of the accident giving rise to plaintiff's claims. The Attorney General's scope-of-employment certification, which has been filed contemporaneously herewith in this matter, has